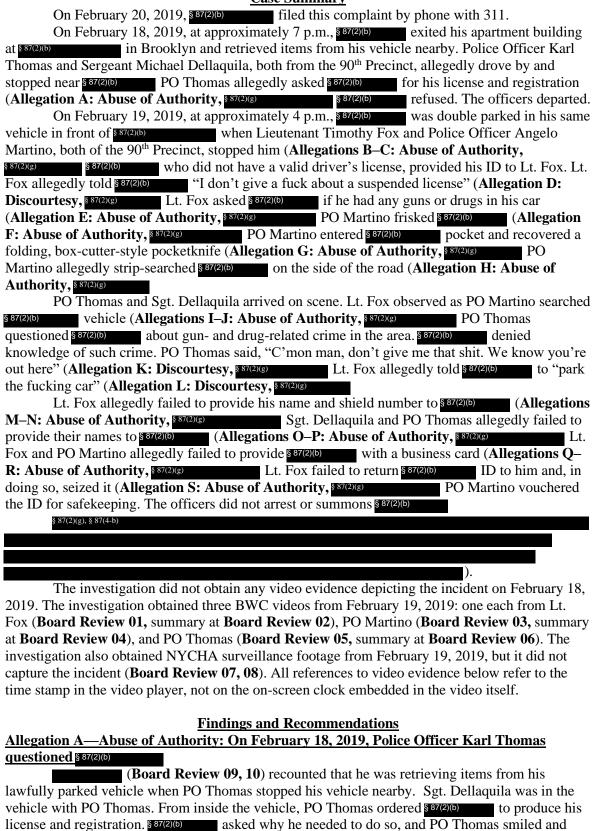
## CCRB INVESTIGATIVE RECOMMENDATION

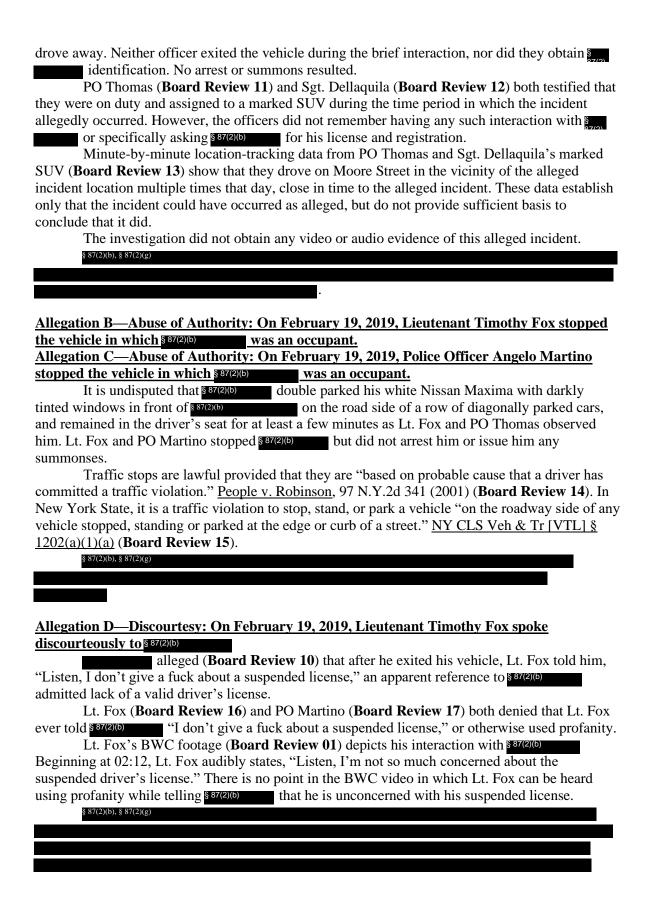
Investigator:	Те	am:	CCRB Case #:	☐ Fore	ce	☑ Discourt.	U.S.
Conor O'Shea	Sq	uad #5	201901595	☑ Abu	ise	O.L.	☐ Injury
Incident Date(s)	Lo	cation of Incident	t:	Preci	nct:	18 Mo. SOL	EO SOL
Monday, 02/18/2019 7:00 PM, 02/19/2019 4:00 PM	Tuesday, In	front of § 87(2)(b)		90		8/19/2020	4/5/2021
Date/Time CV Reported	CV	Reported At:	How CV Reported	: Date	/Time	Received at CC	RB
Wed, 02/20/2019 4:15 PM	cc	CRB	Phone	Wed	1, 02/20	0/2019 4:15 PM	[
Complainant/Victim	Туре	Home Add	dress				
Subject Officer(s)	Shield	TaxID	Command				
1. POM Angelo Martino	23305	964145	090 PCT				
2. LT Timothy Fox	00000	944571	090 PCT				
3. POM Karl Thomas	23368	962838	090 PCT				
4. SGT Michael Dellaquila	01142	936462	090 PCT				
Officer(s)	Allegation				Inve	stigator Recor	nmendation
A.POM Karl Thomas	Abuse: On F		, Police Officer Karl Tl	homas			
B.LT Timothy Fox		February 19, 2019, vehicle in which	Lieutenant Timothy F  87(2)(b) was an o				
C.POM Angelo Martino		Sebruary 19, 2019 oped the vehicle in	, Police Officer Angelo n which <sup>§ 87(2)(b)</sup>	was an			
D.LT Timothy Fox		On February 19, arteously to § 87(2)(b	2019, Lieutenant Timo	othy Fox			
E.LT Timothy Fox	Abuse: On F		, Lieutenant Timothy F	Fox			
F.POM Angelo Martino	Abuse: On F Martino frisl		, Police Officer Angelo	)			
G.POM Angelo Martino	Abuse: On F Martino sear		, Police Officer Angelo	)			
H.POM Angelo Martino		Sebruary 19, 2019 o-searched <sup>§ 87(2)(b)</sup>	, Police Officer Angelo	)			
I.LT Timothy Fox		February 19, 2019, vehicle in which	, Lieutenant Timothy F § 87(2)(b) was an	Fox			
J.POM Angelo Martino		February 19, 2019 The ched the vehicle i	, Police Officer Angelo in which <sup>§ 87(2)(b)</sup>	was an			
K.POM Karl Thomas		On February 19, ke discourteously	2019, Police Officer K to § 87(2)(b)	Carl			
L.LT Timothy Fox		On February 19, arteously to § 87(2)(b	2019, Lieutenant Timo	othy Fox			
M.LT Timothy Fox		Sebruary 19, 2019 Povide his name to	, Lieutenant Timothy F	Fox			

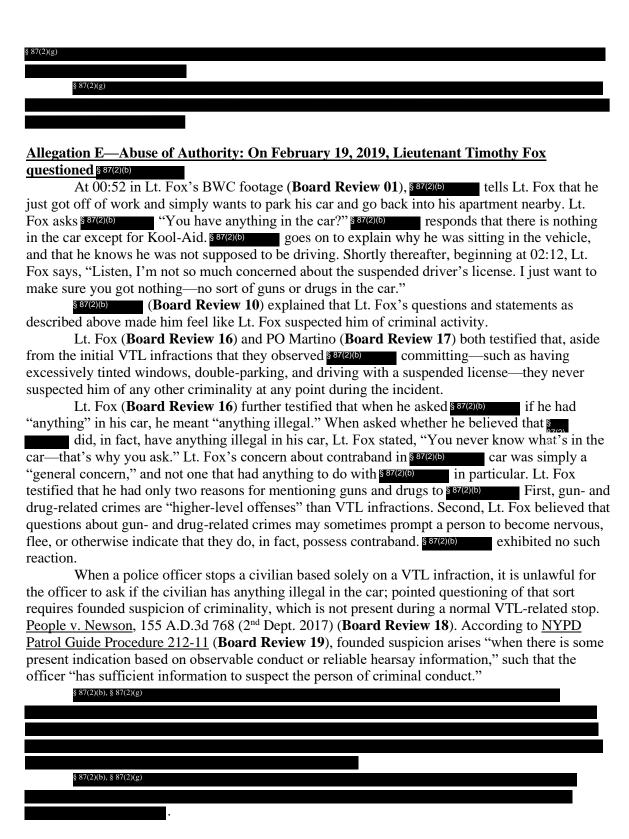
Officer(s)	Allegation	Investigator Recommendation
N.LT Timothy Fox	Abuse: On February 19, 2019, Lieutenant Timothy Fox refused to provide his shield number to \$\frac{3}{87(2)(b)}\$	
O.SGT Michael Dellaquila	Abuse: On February 19, 2019, Sergeant Michael Dellaquila refused to provide his name to §87(2)(b)	
P.POM Karl Thomas	Abuse: On February 19, 2019, Police Officer Karl Thomas refused to provide his name to \$87(2)(b)	
Q.LT Timothy Fox	Abuse: On February 19, 2019, Lieutenant Timothy Fox failed to provide § 87(2)(b) with a business card.	
R.POM Angelo Martino	Abuse: On February 19, 2019, Police Officer Angelo Martino failed to provide S87(2)(b) with a business card.	
S.LT Timothy Fox	Abuse: On February 19, 2019, Timothy Fox seized s property.	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(4-b), § 87(2)(g)		

## **Case Summary**



CCRB Case #201901595





Allegation F—Abuse of Authority: On February 19, 2019, Police Officer Angelo Martino frisked §87(2)(b)

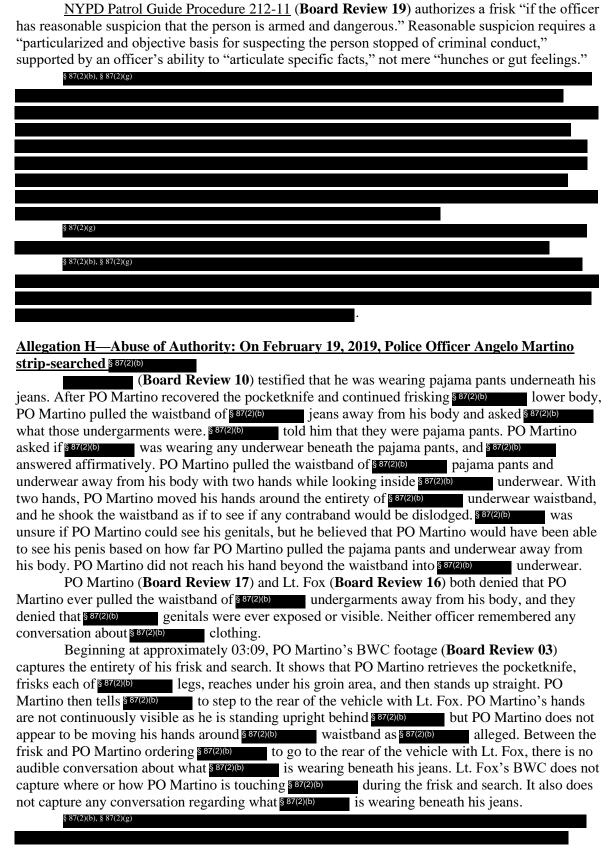
CCRB Case #201901595

## Allegation G—Abuse of Authority: On February 19, 2019, Police Officer Angelo Martino searched § 87(2)(b) It is undisputed that PO Martino frisked § 87(2)(b) lower body and waistband area during this incident, and that he recovered a lawful, folding box-cutter-style pocketknife from one pockets. § 87(2)(6) had no other weapons on him. PO Martino recovered no contraband. The officers did not arrest \$87(2)(b) or issue him any summonses. PO Martino (**Board Review 17**) testified that he did not suspect \$87(2)(b) of possessing a weapon at the time Lt. Fox directed \$87(2)(b) to exit his vehicle. He recounted that, in response to Lt. Fox asking \$87(2)(b) if his vehicle contained guns or drugs, \$87(2)(b) spontaneously admitted that he had a pocketknife which he used for work in his pants pocket. Lt. Fox asked if the officers could search the vehicle, and sar(2)(b) consented to the officers searching both the vehicle and his person. PO Martino initially said he could not recall the exact words used when he consented to such a search, but he later quoted \$87(2)(b) as saying, "I have nothing in the vehicle, and you can search the car if you'd like." PO Martino then frisked the pocket containing the pocketknife, and entered the pocket to remove the pocketknife. At that point, PO Martino had no specific reason to suspect that \$87(2)(b) had any other weapons on his person, and did not suspect \$87(2)(b) of any criminal activity beyond double parking and having tinted windows. Nonetheless, PO Martino continued frisking § 37(2)(b) from his ankles up to his waist. He could not recall if he frisked any other part of \$87(2)(b) body. Beginning at 02:12 in Lt. Fox's BWC footage (**Board Review 01**), Lt. Fox tells that he is not concerned with the suspended license, but rather whether he has any guns or drugs in the car. Lt. Fox asks, "Mind if we take a look in the car?" §87(2)(b) puts his hands up above his shoulders briefly while saying, "You can do whatever you wanna do." As \$87(2)(5) finishes making this statement, PO Martino orders him to turn around and gestures towards vehicle. § \$7(2)(0) faces his vehicle and places his hands atop the roof. PO Martino bends down. A few seconds after PO Martino bends down and appears to begin frisking lower body, §87(2)(b) says, "I'm being honest with you, I just got off of work. I got a pocketknife right here. I got off of work—just right here," while gesturing down and towards one of his pockets. An officer on the other side of \$87(2)(b) car asks what \$87(2)(b) work, and he replies that he does metal refinishing. At 02:39, PO Martino reaches up and places an pocketknife on top of the car. PO Martino then asks, "Where's object consistent with § 87(2)(b) the pocketknife?" Lt. Fox and §87(2)(b) both point to the object PO Martino placed on top of the car and verbally identify it as the pocketknife. § \$7(2)(b) describes it as his "working knife." At 02:59, PO Martino orders \$87(2)(b) to step to the rear of the vehicle with Lt. Fox, and he complies.

The frisk begins at approximately 03:09 in PO Martino's BWC footage (**Board Review 03**). PO Martino begins to frisk [537(2)(b)] lower body and recovers the pocketknife. At 03:28, PO Martino continues to frisk both of [537(2)(b)] legs, all the way down to his ankles, and underneath his groin area, even after recovering and securing the pocketknife.

The BWC footage contradicts PO Martino's claim that \$87(2)(6) stated aloud that he possessed a pocketknife before PO Martino began frisking him. In fact, \$87(2)(6) did not alert the officers to the existence of the pocketknife until after PO Martino had already begun to frisk him. The BWC footage also contradicts PO Martino's claim that \$87(2)(6) verbally consented to the officers searching his person. Lt. Fox asked specifically about the contents of \$87(2)(6) vehicle, and \$87(2)(6) described the contents of the vehicle and invited the officers to search the vehicle. Similarly, when \$87(2)(6) put his hands up and said the officers could do "whatever [they] wanna do," he did so in direct response to Lt. Fox's request to search the vehicle. PO Martino himself indicated as much in his CCRB interview, when he directly quoted \$87(2)(6) as having specifically and exclusively consented to a search of the vehicle.

CCRB Case #201901595



§ 87(2)(b), § 87(2)(g)
Allegation I—Abuse of Authority: On February 19, 2019, Lieutenant Timothy Fox searched
the vehicle in which 887(2)(b) was an occupant.
Allegation J—Abuse of Authority: On February 19, 2019, Police Officer Angelo Martino
searched the vehicle in which §87(2)(b) was an occupant.
It is undisputed that PO Martino searched the passenger compartment of §87(2)(b) car
while Lt. Fox was able to see the search happening from a few feet away. PO Martino later
searched the trunk on instructions from Lt. Fox. As such, the investigation pleaded the vehicle
search against Lt. Fox, as well. Although the exact verbiage §87(2)(b) used remains in dispute, it
is undisputed that §87(2)(b) in sum and substance, told the officers that they could search his
vehicle. The officers did not prepare a consent-to-search form regarding the vehicle search ( <b>Board</b>
<b>Review 20</b> ). Neither Lt. Fox nor PO Martino made any memo book entries regarding the incident
(Board Review 21, 22).
Although Sgt. Dellaquila later joined PO Martino in searching the vehicle, the BWC
footage shows that he responded to the scene as a backup officer once PO Martino had already
begun to search the vehicle, and that he assisted by searching in the passenger cabin. The
investigation did not plead a vehicle search allegation against Sgt. Dellaquila, as he merely assisted
PO Martino with an in-progress search.
PO Martino (Board Review 17) testified that his only reason for searching the vehicle was
consent as described above. Lt. Fox ( <b>Board Review 16</b> ) testified that, as described
above, he wanted to make sure that \$87(2)(b) did not have any guns or drugs in the car,
\$87(2)(g) provided his consent for the officers
to search the vehicle. Lt. Fox provided no other justification for the vehicle search.
As previously noted, Lt. Fox's BWC footage showed that Lt. Fox asked [87(2)(0)] if he
had anything in the vehicle, and \$87(2)(6) said the vehicle only contained Kool-Aid. Lt. Fox
later said that he wanted to make sure \$87(2)(b) did not have any guns or drugs in the car, and
responded by briefly raising his hands and saying, "You can do whatever you wanna
do." PO Martino's BWC footage ( <b>Board Review 03</b> ) shows him finishing his search of the
passenger compartment of the vehicle at 06:22, at which point he tells Lt. Fox that there is nothing
in §87(2)(b) car. PO Martino proceeds to search the trunk as §87(2)(b) returns to the driver's
seat.

A police officer may ask a suspect for consent to search provided that the officer has at least founded suspicion of criminality. <u>People v. Hollman</u>, 79 N.Y.2d 181 (1992) (**Board Review 23**). When police officers seek consent to search in New York City, the RTKA imposes, in relevant part, several specific, mandatory requirements (**Board Review 24**):

Although Sgt. Dellaquila (Board Review 12) testified that he smelled a strong odor of

burnt marijuana emanating from sericle, every other officer on scene testified that they never suspected sericle of committing any offenses besides the initial VTL infractions.

They made no mention of an odor of marijuana. § 87(2)(b), § 87(2)(g)

• Articulate, using plain and simple language delivered in a non-threatening manner, that the person who is the subject of the consent search is being asked to voluntarily, knowingly, and intelligently consent to the search, NYC Administrative Code 14-173(a)(1);

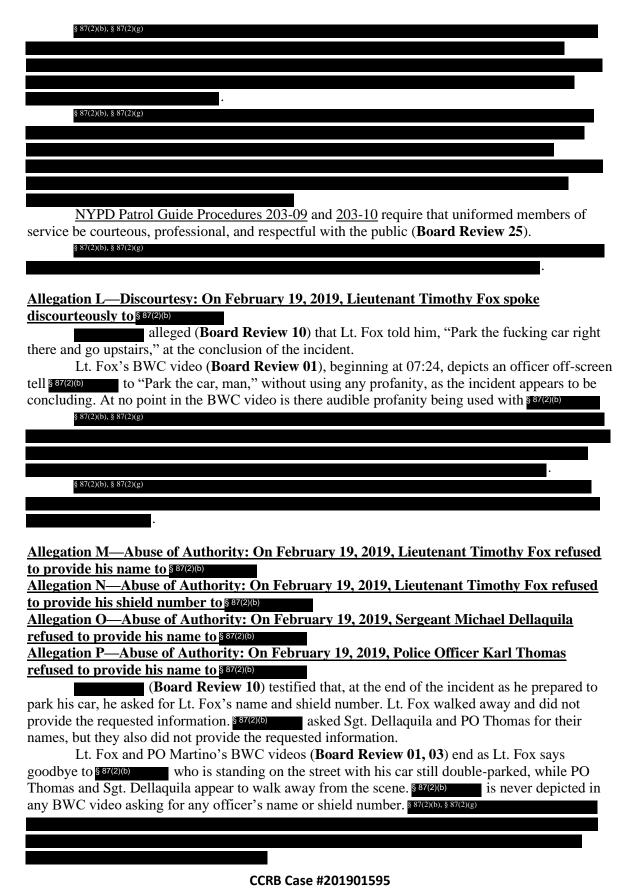
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Administrative Code 14-173(a)(1); Affirm that the individual being searched understands the information communicated as described above, NYC Administrative Code 14-173(a)(3); § 87(2)(b), § 87(2)(g) § 87(2)(g) Allegation K—Discourtesy: On February 19, 2019, Police Officer Karl Thomas spoke discourteously to § 87(2)(b) alleged (**Board Review 10**) that while PO Martino searched his trunk, PO Thomas approached his vehicle and began speaking with him. PO Thomas asked him who in the area had guns and drugs. § 87(2)(b) said he did not know. PO Thomas replied, "C'mon man, don't give me that shit. We know you're out here," which \$87(2)(b) took to mean that PO Thomas believed he was gang-affiliated and involved in criminal activity. PO Thomas' BWC video (**Board Review 05**), beginning at 03:50, depicts him walking and deactivating his BWC upon approach, terminating the video and audio recording. There is no video or audio of their ensuing conversation from PO Thomas' perspective. Lt. Fox's BWC video (Board Review 01), beginning at 06:33, captures the portion of the incident that followed after PO Thomas deactivated his BWC. Lt. Fox's video depicts PO Thomas walk across the screen from right to left and approach \$87(2)(b) who is sitting in the driver's seat, with the driver's window rolled down. PO Thomas and §87(2)(b) appear to converse while PO Martino searches the trunk. Lt. Fox's BWC footage does not capture the audio of PO Thomas conversation, apparently due to the distance between them, the ambient noise including wind and an overhead plane, and Lt. Fox's simultaneous conversation with PO Martino. At 07:26, as Lt. Fox approaches \$87(2)(b) and PO Thomas, \$87(2)(b) audibly states to PO Thomas, "I'm not that type of person." PO Thomas says, "Alright, cool, alright." PO Thomas (Board Review 11) acknowledged having a conversation with \$87(2)(b) during the above-mentioned portion of Lt. Fox's BWC video, but stated that he had "no idea" what it was about. PO Thomas did not remember—and did not deny—asking \$87(2)(b) about guns or drugs, or using the word "shit" or any other profanity during this conversation. When asked to explain why he deactivated his BWC upon approaching \$87(2)(b) PO Thomas stated that there was "no other point" in keeping the BWC activated, because he believed that the incident would not result in an arrest or summons. Although PO Martino was still actively searching the trunk for at least part of this conversation, PO Thomas stated that he believed the incident was effectively over, and so he did not need to keep recording. PO Thomas stated that he had no other reasons for deactivating his BWC upon approaching \$87(2)(b) The only offenses that PO Thomas believed committed were the original VTL infractions that prompted the stop. Sgt. Dellaquila, Lt. Fox, and PO Martino (Board Review 12, 16, 17) all denied hearing anyone use profanity during the incident, and Lt. Fox and PO Martino specifically denied hearing

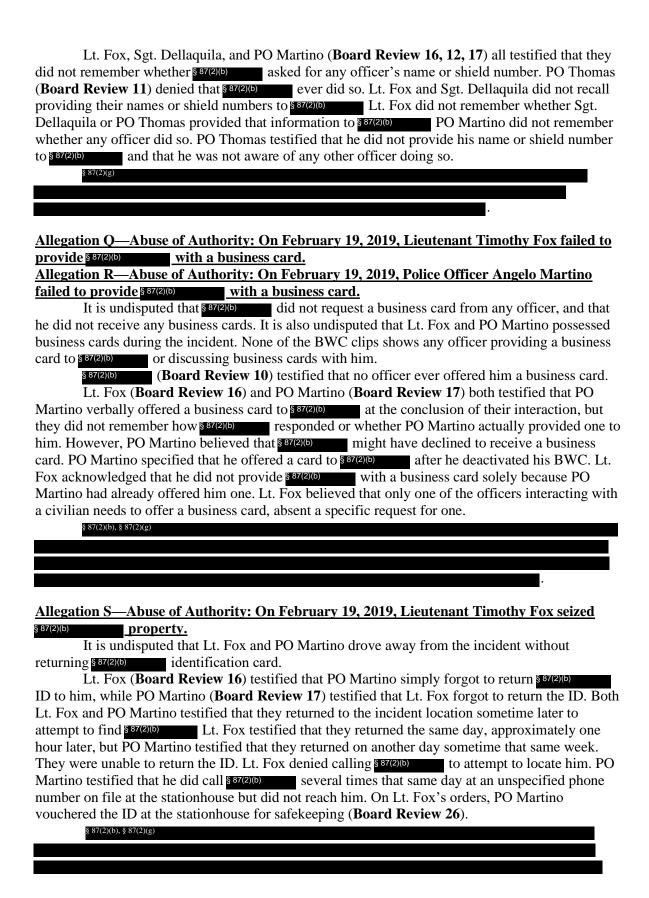
Explain that the search will not be conducted if the person refuses to consent to the search, NYC

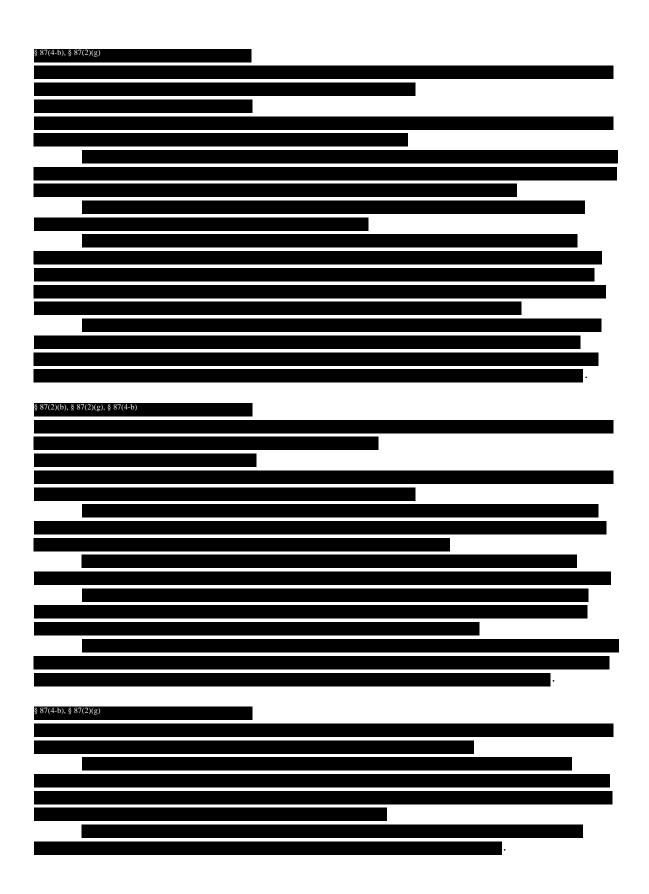
CCRB Case #201901595

PO Thomas make the alleged profane statement. However, Lt. Fox also denied hearing them speak to one another at any point, and PO Martino did not recall if the two ever spoke. Sgt. Dellaquila did not remember whether PO Thomas asked \$87(2)(b) about who had guns or drugs in the area.



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	§ 87(2)(b), § 87(4-b), § 87(2)(g)
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	Civilian and Officer CCRB Histories
	§ 87(2)(b)
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	<ul> <li>Lt. Fox has been a member of service for 12 years and named a subject in five other CCRB complaints and seven other allegations, one of which was substantiated:</li> <li>CCRB case #201901491 involved a substantiated allegation of a stop and an OMN for failure to prepare a stop-and-frisk report. The Board recommended Command Discipline A for the substantiated stop, but the NYPD does not yet appear to have imposed any discipline.</li> </ul>
	O S 87(2)(g) PO Martino has been a member of service for two years and named a subject in two other CCRB
	complaints and two other allegations, neither of which has been substantiated. § 87(2)(g)
	PO Thomas has been a member of service for three years and named a subject in two other CCRI complaints and two other allegations, neither of which was substantiated. [887(2)(9)]
	Sgt. Dellaquila has been a member of service for 15 years. This is the first and only CCRB complaint in which he has been named a subject.

As of January 2, 2020, the NYC Office of the Comptroller has no record of any Notice of Claim

This case was ineligible for mediation.

from § 87(2)(b) regarding this incident (Board Review 34).

**Mediation, Civil and Criminal Histories** 

§ 87(2)(b)			
Squad No.: #05			
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Investigator:	Cianatura	Investigator Conor O'Shea Print Title & Name	Doto
	Signature	Finit Title & Name	Date
Squad Leader:		Inv. Manager Daniel Giansante	
	Signature	Print Title & Name	Date
D'			
Reviewer:	Signature	Print Title & Name	Date